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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,950	10/29/2003	Yoshinari Iwata	05435.0002	6160
22852	7590	05/16/2005		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER MCCALL, ERIC SCOTT	
			ART UNIT 2855	PAPER NUMBER

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8M

<b>Office Action Summary</b>	<b>Application No.</b> 10/694,950	<b>Applicant(s)</b> IWATA ET AL.	
	<b>Examiner</b> Eric S. McCall	<b>Art Unit</b> 2855	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.  
     4a) Of the above claim(s) 14-19 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-7 and 10-13 is/are rejected.  
 7) ☒ Claim(s) 8 and 9 is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 29 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:  
         1. ☒ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/23/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **EXHAUST TREATMENT APPARATUS**

### **FIRST OFFICE ACTION ON THE MERITS**

#### **ELECTION**

Applicant's election without traverse of claims 1-13 in the reply filed on March 02, 2005 is acknowledged.

Claims 14-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

#### **SPECIFICATION**

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. The Applicant's cooperation is requested in correcting any errors of which the Applicant may become aware of in the specification.

**CLAIMS**

**35 U.S.C. § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 3, and 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention because claim 1 establishes that the inlet port is close to and “away” from the exhaust port, but claim 2 sets forth that the inlet port is in close “contact” with the exhaust port. Thus, a contradiction exists.

Likewise in claim 10, the exhaust inlet portion is set forth as connected to the internal combustion engine. However, claim 1 sets forth that the inlet portion is displaced away from the exhaust port.

**35 U.S.C. § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Tripathi et al. (6,085,582).

With regards to claim 1, Tripathi et al. teach an exhaust treatment apparatus for treating exhaust discharged from an exhaust port of an internal combustion engine when testing the internal combustion engine, comprising:

an exhaust inlet portion (16) having an inlet port through which exhaust discharged from the exhaust port (tailpipe of vehicle 12) is introduced; and

a displacement mechanism (inherent support for holding inlet portion 16 and the vehicle body which holds the exhaust port) which displaces the exhaust inlet portion in such a way as to set the inlet port close to and away from the exhaust port (the inlet portion 16 of Tripathi et al. is placed "close to and away" from the exhaust port, ie. tailpipe, and thus the exhaust inlet portion is "displaced close to and away" from the exhaust port).

The Examiner points out that the Applicant's claim 1 is deemed as being very broad in that said claim would read on a typical exhaust system on a vehicle having a catalytic converter which would be interpreted as the "exhaust treatment apparatus" having an inlet portion, an exhaust port in the cylinder head which would be interpreted as the "exhaust port" as claimed, and a "displacement mechanism" as claimed which would be the exhaust pipe between the

cylinder head and the catalytic converter because the exhaust pipe displaces the exhaust inlet port (cylinder head) from the inlet of the catalytic converter.

With respect to claim 4, Tripathi et al. suggest an exhaust treatment section for treating the exhaust (Fig. 1); and

an exhaust pipe (26) which connects the exhaust inlet portion to the exhaust treatment section to lead exhaust, introduced to the exhaust port, to the exhaust treatment section.

With respect to claims 5-7, the body/frame of vehicle (12) of Tripathi et al. suggests a test bed which restricts the rocking of the internal combustion engine as claimed.

With respect to claim 13, the exhaust inlet portion (16) is interpreted as being attached to the displacement mechanism (support for holding inlet portion 16) in a detachable manner.

*Allowable Subject Matter*

Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims because the prior art fails to teach or suggest the displacement mechanism as defined in the respective claims.

**CITED DOCUMENTS**

The Applicant's attention is directed to the enclosed "PTO-892" form for the prior art documents cited at the time of this office action.

**CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric S. McCall whose telephone number is (571) 272-2183.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric S. McCall  
Primary Examiner  
Art Unit 2855  
May 12, 2005